

1  
2  
3  
4  
5  
6 **UNITED STATES DISTRICT COURT**  
7 **SOUTHERN DISTRICT OF CALIFORNIA**

8  
9 JEANETTE CLARK, individually and  
10 on behalf of those similarly situated,

11 Plaintiff,  
12 vs.

13 LG ELECTRONICS U.S.A., INC., and  
14 DOES 1 through 25, inclusive,

15 Defendants.

16 Case No.: 3:13-CV-485-JM (JMA)

17 **ORDER GRANTING**  
18 **DEFENDANT'S MOTION TO**  
19 **DISMISS AND DEFENDANT'S**  
20 **DENYING MOTION TO STRIKE**

21 Plaintiff Jeannette Clark ("Plaintiff") filed a complaint in California State  
22 court on December 10, 2012 against LG Electronics U.S.A., Inc. ("LG"), which  
23 was later dismissed. Plaintiff filed a first amended complaint in California State  
24 court on January 14, 2013. On February 28, 2013, LG removed this matter to  
25 federal court. On April 8, 2013, LG filed a motion to dismiss under Federal Rule  
of Civil Procedure ("Rule") 12(b)(6) and a motion to strike under Rule 12(f). For  
the reasons explained below, LG's motion to dismiss is granted with leave to  
amend and LG's motion to strike is denied as moot.

26 **I. BACKGROUND**

27 On or about October 2011, Plaintiff purchased a LG refrigerator, Model No.  
28 LFX31925ST, for approximately \$3,200. FAC ¶ 13. She used her LG

1 refrigerator in a manner consistent with its intended use. Id. The refrigerator  
2 allegedly had a Smart Cooling Plus system (“SCP system”) “to keep your food  
3 fresh” and came with an express warranty for workmanship and materials. Id.

4 ¶ 36.

5 Plaintiff claims that her LG refrigerator’s main control panel came with  
6 inherent design and materials defects. Id. ¶ 6. Plaintiff explains that an alleged  
7 programming defect causes the SCP system to shut down, thereby defrosting the  
8 food in both the refrigerator and freezer and causing condensation to build up. Id.  
9 This ultimately results in the food spoiling. In addition, the re-freezing of the  
10 condensation causes doors and drawers to freeze shut and the ice chute to clog.  
11 Id. The only way to correct the programming defect is to unplug the refrigerator  
12 for 15 minutes, which reboots the control panel. Id. The programming defect  
13 allegedly occurs frequently and eventually results in the control panel burning out.  
14 Id.

15 Plaintiff further alleges that LG was aware of these problems. Plaintiff cites  
16 several complaints from the internet, which purportedly should have put LG on  
17 notice regarding the SCP system’s defects. See, e.g., id. ¶ 37 (providing samples  
18 from websites such as consumer affairs and complaintsboard.com). However, of  
19 the complaints cited by Plaintiff, only one complaint was made prior to Plaintiff’s  
20 purchase of her LG refrigerator. See id. (identifying one complaintsboard.com  
21 complaint as having been posted prior to October 2011). All remaining  
22 complaints were made in 2012. Plaintiff does not specify why LG would be  
23 aware of complaints posted on the internet on websites other than LG’s own  
24 website.

1 Plaintiff claims LG never disclosed the SCP system's defect and that this  
 2 failure to disclose resulted in Plaintiff and the proposed class overpaying for their  
 3 LG refrigerators. Plaintiff has not limited her proposed class to any specific types  
 4 of LG refrigerators. Plaintiff asserts five claims against LG: (1) violation of  
 5 Consumer Legal Remedies Act ("CLRA"); (2) violation of the California  
 6 Business & Professions Code § 17200, *et seq.* ("UCL"); (3) violation of California  
 7 Business & Professions Code § 17500, *et seq.* for false and misleading advertising  
 8 ("FAL"); (4) breach of express warranty; (5) breach of implied warranty (Cal.  
 9 Civ. Code § 1790, *et seq.* and Cal. Comm. Code § 2314); and (6) violation of the  
 10 Magnuson-Moss Warranty Act ("MMWA") (15 U.S.C. § 2301 *et seq.*).

### 11 **III. MOTION TO DISMISS**

#### 12 **A. Legal Standard**

13 For a plaintiff to overcome a Rule 12(b)(6) motion, the complaint must  
 14 contain "enough facts to state a claim to relief that is plausible on its face." Bell  
 15 Atl. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when  
 16 the plaintiff pleads factual content that allows the court to draw the reasonable  
 17 inference that the defendant is liable for the misconduct alleged." Ashcroft v.  
 18 Iqbal, 556 U.S. 662, 678 (2009). Factual pleadings merely consistent with a  
 19 defendant's liability are insufficient to survive a motion to dismiss because they  
 20 only establish that the allegations are possible rather than plausible. See id. at  
 21 678-79. The court should grant 12(b)(6) relief only if the complaint lacks either a  
 22 "cognizable legal theory" or facts sufficient to support a cognizable legal theory.  
 23 See Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1990).

24 In addition, Rule 9(b) requires that the complaint "state with particularity  
 25 the circumstances constituting fraud." The Ninth Circuit has explained that

1 “[a]verments of fraud must be accompanied by ‘the who, what, when, where, and  
 2 how’ of the misconduct charged.” Vess v. Ciba-Geigy Corp. USA, 317 F.3d  
 3 1097, 1106 (9th Cir. 2003) (quoting Cooper v. Pickett, 137 F.3d 616, 627 (9th Cir.  
 4 1997)).

5 **B. Discussion**

6 **1. Fraud-Based Claims**

7 LG alleges that Plaintiff’s CLRA,<sup>1</sup> UCL,<sup>2</sup> and FAL<sup>3</sup> claims should be  
 8 dismissed for failure to meet Rule 9(b)’s heightened pleading requirements  
 9 because these fraud-based claims were not pled with the requisite specificity. LG  
 10 relies on the Ninth Circuit’s explicit holding that Rule 9(b) applies to CLRA and  
 11 UCL claims because they are premised on fraud. See Kearns v. Ford Motor Co.,  
 12 567 F.3d 1120, 1124 (9th Cir. 2009); see also Vess, 317 F.3d at 1103 (applying  
 13 Rule 9(b) to pleading of state-law cause of action). By extension, Rule 9(b)’s  
 14 heightened pleading requirement applies to Plaintiff’s FAL claim, which prohibits  
 15 any “unfair, deceptive, untrue, or misleading advertising,” Cal. Bus. & Prof. Code  
 16 § 17500, because it similarly involves allegations of fraud.

17 LG first argues that Plaintiff’s failure to specify which refrigerators she is  
 18 complaining about is fatal to her FAC. LG notes that Plaintiff does not provide  
 19 any model numbers, does not limit her claims to those refrigerators with the SCP  
 20 system, and does not even define the term “LG Refrigerator” in her FAC. See

---

21 <sup>1</sup> The CLRA prohibits “unfair methods of competition and unfair or deceptive acts or practices  
 22 undertaken by any person in a transaction intended to result or which results in the sale . . . of  
 23 goods or services to any consumer.” Cal. Civ. Code § 1770.

24 <sup>2</sup> The UCL prohibits “unlawful, unfair or fraudulent business act[s] or practice[s]” and “unfair,  
 25 deceptive, untrue or misleading advertising.” Cal. Bus. & Prof. Code § 17200.

<sup>3</sup> The FAL prohibits any “unfair, deceptive, untrue, or misleading advertising.” Cal. Bus. &  
 Prof. Code § 17500.

1 MTD at 4. LG further argues that the Plaintiff “did not disclose what the ads or  
2 promotions specifically said, when and how Plaintiff was exposed to any such  
3 advertising or promotions, or the specific way in which they were misleading.”  
4 MTD at 7 (citing In re Hydroxycut Mktg. & Sales Practices Litig., 801 F. Supp.  
5 2d 993, 1006 (S.D. Cal. 2011) (dismissing similar claims for failure to specify the  
6 representations upon which plaintiff had relied or in what context he had seen or  
7 read the representations)).

8 Plaintiff argues that she does not need to meet Rule 9(b)’s heightened  
9 pleading requirements because her claims are based on a failure to disclose rather  
10 than fraud. See Horvath v. LG Elecs. MobileComm U.S.A., Inc., 2012 U.S. Dist.  
11 LEXIS 19215 \*27 (“Alternatively, Rule 9(b) does not require that allegations  
12 supporting a claim be stated with particularity when those allegations describe  
13 non-fraudulent conduct.”). Plaintiff alternatively argues that she has met the  
14 heightened pleading requirement as it is not as stringent for fraud-by-omission  
15 cases. See Tait v. BSH Home Appliances Corp., 2012 U.S. Dist. LEXIS 183649  
16 (C.D. Cal. 2012) (a class certification order permitting claims against  
17 manufacturers of washing machines that failed to self-clean); Collins v.  
18 eMachines, Inc., 202 Cal. App. 4th 249 (2011); Klein v. Chevron U.S.A., Inc.,  
19 202 Cal. App. 4th 1342 (2012) (permitting a claim alleging that consumers were  
20 harmed by the practice of selling retail motor fuel in non-temperature-adjusted  
21 gallon units because consumers were required to purchase significantly more fuel  
22 to obtain the same amount of energy they would receive if the fuel was sold in  
23 temperature-adjusted gallons). Plaintiff explains that her claims are based on  
24 LG’s failure to inform her of the extraordinary measures (such as emptying the ice  
25 tray and unplugging the refrigerator for 15 minutes daily) necessary to keep the

1 SCP system working. See Opp. MTD at 7-8. As Plaintiff asserts that LG was  
2 aware of these problems with the SCP system and failed to disclose these  
3 problems to purchasers prior to purchasing any LG refrigerator with an SCP  
4 system, Plaintiff argues that her fraud-based claims should stand.

5 Plaintiff further notes that she has, in fact, plead which model number she  
6 purchased. See Opp. MTD at 3 (citing FAC ¶ 13). Plaintiff also claims that her  
7 proposed class is based on a type of technology, the SCP system, which is a  
8 proper method for identifying a class. See, e.g., Tait v. BSH Home Appliances  
9 Corp., 2012 U.S. Dist. LEXIS 183649 (S.D. Cal. 2012) (permitting class action  
10 concerning front loading washers to proceed); In re Toyota Motor Corp.  
11 Unintended Acceleration Mktg., Sales Practices, and Prods. Liab. Litig., 754 F.  
12 Supp. 2d 1145 (C.D. Cal. 2010) (concerning a class action based on an electronic  
13 throttle control system).

14 Next, LG claims that the vague statements about “keeping food fresh” upon  
15 which the Plaintiff relies amount to nothing more than a “[g]eneralized, vague,  
16 and unspecified assertion constitut[ing] ‘mere puffery’ upon which a reasonable  
17 consumer could not rely, and hence [is] not actionable.” Annunziato v.  
18 eMachines, Inc., 402 F. Supp. 2d 1133, 1139 (C.D. Cal. 2005). LG relies heavily  
19 on Tietsworth v. Sears, Roebuck and Co., 2009 U.S. Dist. LEXIS 98532 (N.D.  
20 Cal. 2009), a case in which the plaintiff relied on defendant’s statements that the  
21 washing machines were of the “highest quality,” “top-of-the-line,” and could help  
22 consumers do laundry more “conveniently” and “efficiently.” Id. at \*1. The court  
23 held that these statements were insufficient to state a claim because they were  
24 only puffery and not statements about the product’s specific or absolute  
25 characteristics. See id. at \*7.

1 Plaintiff asserts the “keeping food fresh” statement is not puffery because it  
 2 is an “affirmative statement about (1) a piece of technology within the [LG]  
 3 [r]efrigerator, and (2) the purpose of the piece of technology.” Opp. MTD at 10.  
 4 Plaintiff claims that LG’s statement is different than the statement at issue in  
 5 Tietsworth because LG’s statement was “a partial representation that was related  
 6 to a fraudulent omission.” Opp. MTD at 11.

7 In addition, LG argues that Plaintiff has failed to plead adequately that LG  
 8 had knowledge of the alleged defects. See Wilson v. Hewlett-Packard Co., 668  
 9 F.3d 1136, 1146 (9th Cir. 2012) (requiring plaintiff to “sufficiently allege that a  
 10 defendant was aware of a defect at the time of sale to survive a motion to  
 11 dismiss”); see also In re Sony HDTV, 758 F. Supp. 2d 1077, 1095 (S.D. Cal.  
 12 2010) (“Sony had no duty to disclose facts of which it was unaware.”); Kent v.  
 13 Hewlett-Packard Co., 2010 U.S. Dist. LEXIS 76818, at \*29 (N.D. Cal. July 6,  
 14 2010) (“Plaintiffs have not alleged with specificity any other facts that could  
 15 support a claim that HP knew the computers . . . were defective at the time of sale  
 16 or that HP actively concealed a defect at the time of sale.”). Moreover, inferred  
 17 knowledge-based access to aggregate information and data is conclusory,  
 18 speculative, and does not suggest how tests or information could have alerted a  
 19 defendant about a specific defect. See Wilson, 668 F.3d at 1146-47 (citing  
 20 Tietsworth, 2009 U.S. Dist. LEXIS 98532, at \*13 (finding conclusory the  
 21 allegation that defendants were in a “superior position to know the truth about the  
 22 [product”])); Oestreicher v. Alienware Corp., 544 F. Supp. 2d 964, 974 (N.D. Cal.  
 23 2008) (holding allegation that defendant had “exclusive knowledge as the  
 24 manufacturer” did not show that defendant was aware of a defect)).

25 //

1 Plaintiff argues that “the court can reasonably infer that [LG] does not send  
2 its products out with no testing and no feedback as to their performance.” Opp.  
3 MTD at 9. In addition, Plaintiff alleges that LG’s knowledge can be inferred from  
4 complaints lodged by its customers. However, Plaintiff does not offer any cases  
5 indicating that knowledge can be inferred from likely product testing or customer  
6 complaints alone. In addition, Plaintiff only cites one online customer complaint  
7 on a third party website made prior to her purchase of the LG refrigerator.

8 As is evident from the arguments above, Plaintiff’s claims fall both under  
9 the theory that LG made fraudulent statements about the ability of LG  
10 refrigerators with the SCP system to keep food fresh and the theory that LG failed  
11 to disclose the alleged extraordinary steps necessary to maintain the LG  
12 refrigerators. Both theories, however, are premised on fraud, and therefore both  
13 theories must meet Rule 9(b)’s heightened pleading requirement.

14 Under the first theory of liability, the court agrees that LG’s alleged  
15 “keeping food fresh” statement, without more, amounts to non-actionable puffery  
16 because that statement does not provide an objective standard by which the court  
17 can assess the product’s performance and, importantly, reflects only the general  
18 purpose of refrigerators, i.e. to keep food fresh. That statement is more similar to  
19 those in Tietsworth v. Sears, Roebuck and Co., 2009 U.S. Dist. LEXIS 98532  
20 (N.D. Cal. 2009), than the statements in the cases cited by Plaintiff. Plaintiff also  
21 failed to plead where and when she encountered the statement. Finally, because  
22 Plaintiff does not specify when she saw the allegedly misleading statement, her  
23 allegations of reliance are deficient.

24 Under the second theory of liability, Plaintiff has still failed to adequately  
25 define her class. Although Plaintiff has indicated that her class is based on the

1 type of technology in her refrigerator, her FAC does not explicitly define her class  
2 as such. However, Plaintiff may have a viable claim if she can define her class.  
3 The court does not find LG's arguments regarding knowledge persuasive given  
4 that the LG refrigerators allegedly did not function at all rather than having a  
5 smaller, harder to detect issue. Accordingly, Plaintiff's fraud-based claims are  
6 dismissed for failure to state a claim.

## 7 **2. Warranty-Based Claims**

### 8 **a. Breach of Warranty Claim**

9 A manufacturer is "not liable for breach of express warranty merely  
10 because a product manifests recurring failures during the warranty period. Rather,  
11 the question is whether [a plaintiff] sought repairs, refunds, or replacements and,  
12 if so, whether [the manufacturer] responded appropriately under the warranty."

13 Kent v. Hewlett-Packard Co., 2010 U.S. Dist. LEXIS 76818, at \*15-16 (2010).

14 However, irrespective of whether a manufacturer has responded appropriately  
15 under the warranty, "an express warranty covering 'materials and workmanship'  
16 does not include design defects." See, e.g., Horvath v. LG Elecs. MobileComm  
17 U.S.A., Inc., 2012 U.S. Dist. LEXIS 19215 (S.D. Cal. 2012); Gertz v. Toyota  
18 Motor Corp., 2011 U.S. Dist. LEXIS 94183, at \*10 (C.D. Cal. 2011) (dismissing  
19 express warranty claim where warranty did not extend to design defects); Brothers  
20 v. Hewlett-Packard Co., 2007 U.S. Dist. LEXIS 13155, at \*14 (N.D. Cal. 2007)  
21 (rejecting a breach of express warranty claim for a design defect because the  
22 warranty guaranteed against defects in "materials and workmanship").

23 LG argues that Plaintiff's breach of warranty claim fails to state a claim  
24 because the alleged design defect does not fall within the express warranty's terms  
25 and she failed to allege that she provided LG with an opportunity to repair the

1 refrigerator during the warranty period. See MTD at 12. LG further insists that  
2 Plaintiff's claim is a defective design claim because Plaintiff's statements in the  
3 FAC often suggest that the defects with the LG refrigerators are inherent and not  
4 based on materials or workmanship. See id.

5 Plaintiff acknowledges that design defects may not be covered, but argues  
6 that its FAC allegations are related to the LG refrigerators' "design, programmed  
7 operations, parts, pieces, materials, and workmanship." MTD at 13 (citing FAC  
8 ¶ 71). In addition, Plaintiff complains that LG's multiple attempts to repair her  
9 LG refrigerator failed and should be covered by her LG refrigerator's express  
10 warranty. Id. at 13 (citing FAC ¶¶ 82, 83).

11 The court finds that Plaintiff has adequately pled that she gave LG the  
12 opportunity to respond and to provide repairs, refunds, or replacements.  
13 However, the court agrees that Plaintiff has not adequately pled a breach of  
14 warranty claim because it is unclear what defect, other than a design defect, the  
15 LG refrigerators allegedly suffered from. If anything, multiple repairs of the same  
16 part suggest that the defect could not be remedied by properly assembling the LG  
17 refrigerators with non-defective parts. While Plaintiff may yet have a claim,  
18 Plaintiff must be more explicit regarding the LG refrigerators' non-design based  
19 defects.

20 **b. Breach of Implied Warranty Claim**

21 Under California law, the implied warranty of merchantability means that  
22 the consumer goods: "(1) Pass without objection in the trade under the contract  
23 description; (2) Are fit for the ordinary purposes for which such goods are used;  
24 (3) Are adequately contained, packaged, and labeled; [and] (4) Conform to the  
25 promises or affirmations of fact made on the container or label." Cal. Civ. Code

1 § 1791.1. “[A] warranty that the goods shall be merchantable is implied in a  
 2 contract for their sale if the seller is a merchant with respect to goods of that  
 3 kind . . . . Goods to be merchantable must be . . . fit for the ordinary purposes for  
 4 which such goods are used . . . .” Cal. Com. Code § 2314. A plaintiff claiming  
 5 breach of an implied warranty of merchantability must show that the product “did  
 6 not possess even the most basic degree of fitness for ordinary use.” Mocek v.  
 7 Alfa Leisure, Inc., 114 Cal. App. 4th 402, 406 (2003).

8 In the FAC, Plaintiff claims that LG breached the implied warranty of  
 9 merchantability because the LG refrigerator was not fit for its ordinary purpose,  
 10 keeping food fresh. Plaintiff explains that the LG refrigerator’s cooling system  
 11 shuts down, causing the LG refrigerator’s contents to spoil, water to pool on the  
 12 floor, and ice to melt and re-freeze when the cooling system starts to work again.  
 13 See Opp. MTD at 19 (citing FAC ¶¶ 6, 13, 36, 38, & 72). For the LG refrigerator  
 14 to work, Plaintiff has to unplug and re-plug the LG refrigerator in to clear its  
 15 system of errors. Plaintiff argues implied warranties existed for the LG  
 16 refrigerator that she purchased and that she is a third-party beneficiary of said  
 17 implied warranties. Plaintiff further claims that LG’s waiver and/or limits on her  
 18 LG refrigerator’s implied warranties “are unconscionable, illegal, and  
 19 unenforceable, since Plaintiff and the California Class had no meaningful choice  
 20 in determining those limitations.” FAC ¶ 97.

21 The unconscionability alleged by Plaintiff has both a procedural and a  
 22 substantive element. See Aron v. U-Haul Co. of California, 143 Cal. App. 4th  
 23 796, 808 (2006) (citing Armendariz v. Foundation Health Psychcare Services,  
 24 Inc., 24 Cal. 4th 83, 114 (2000)). “The procedural element focuses on factors of  
 25 oppression and surprise.” Berenblat v. Apple, Inc., 2010 WL 1460297, at \*4

1 (N.D. Cal. 2010). “The oppression component arises from an inequality of  
2 bargaining power of the parties to the contract and an absence of real negotiation  
3 or a meaningful choice on the part of the weaker party.” Kinney v. United  
4 Healthcare Servs., 70 Cal. App. 4th 1322, 1329 (1999). “The meaningfulness of a  
5 party’s choice is based not only on his relationship to the other party but also on  
6 his ability to obtain the goods or services which are the subject of the parties’  
7 contract from others.” Dean Witter Reynolds, Inc. v. Superior Court, 211  
8 Cal. App. 3d 758, 768 (1989). In contrast, “[t]he substantive element of  
9 unconscionability focuses on the actual terms of the agreement and evaluates  
10 whether they create “overly harsh” or “one-sided” results as to ‘shock the  
11 conscience.’” Aron v. U-Haul Co. of Cal., 143 Cal. App. 4th 796, 809 (2006).

12 LG argues that it excluded the implied warranty of merchantability pursuant  
13 to California Commercial Code § 2316(2), which provides that the implied  
14 warranty of merchantability may be excluded or modified if the writing mentions  
15 merchantability and is conspicuous. LG notes that the express warranty, which  
16 was included in the LG refrigerator’s owner manual, contained the following  
17 exclusion of the implied warranty:

18 **THIS WARRANTY IS IN LIEU OF ANY OTHER  
19 WARRANTY, EXPRESS OR IMPLIED,  
20 INCLUDING WITHOUT LIMITATION ANY  
21 WARRANTY OF MERCHANTABILITY OR  
22 FITNESS FOR A PARTICULAR PURPOSE. TO  
23 THE EXTENT ANY IMPLIED WARRANTY IS  
REQUIRED BY LAW IT IS LIMITED IN  
DURATION TO THE EXPRESS WARRANTY  
PERIOD ABOVE.**

24  
25

1 MTD at 16 (citing Jang Decl., Ex. A). LG believes that this waiver of the implied  
2 warranty of merchantability was sufficient, but that, in any event, Plaintiff has  
3 failed to plead that her LG refrigerator did not possess even the most basic degree  
4 of fitness for ordinary use. LG also argues that Plaintiff is attempting to “evoke  
5 this plain unambiguous, and conspicuously posted disclaimer by arguing that it is  
6 unconscionable.” MTD at 16.

7 In addition, LG claims the Plaintiff had other options for purchasing a  
8 refrigerator or that she could not obtain additional warranty protection from LG.  
9 See Berenblat v. Apple, Inc., 2010 U.S. Dist. LEXIS 46052, at \*9 (N.D. Cal.,  
10 2010) (“However, while the terms of the warranty are non-negotiable, Plaintiffs  
11 do not allege that they lacked other options for purchasing laptop computers or for  
12 obtaining additional warranty protection from Apple itself.”). As Plaintiff had  
13 other choices, LG argues that Plaintiff cannot adequately plead oppression.

14 Plaintiff, however, asserts that LG’s behavior was procedurally  
15 unconscionable because she was unaware and was not made aware of the  
16 limitation of damages prior to her purchase. See Opp. MTD at 18. The manual  
17 was allegedly packed with the LG refrigerator, and therefore was not available to  
18 Plaintiff prior to purchase. See id. Finally, the contract was procedurally  
19 unconscionable as it was presented on a “take it or leave it basis,” which  
20 prevented Plaintiff from negotiating the terms of the contract. See id.

21 With respect to substantive unconscionability, LG argues that “Plaintiff  
22 does not make any allegations that would address this element of her claim, such  
23 as LG’s conduct was overly harsh or one-sided or that the exclusion or limitation  
24 of the warranty somehow ‘shocks the conscience.’” MTD at 17. LG reiterates  
25 that such warranty disclaimers are authorized by the UCC and do not offend

1 public policy. See id. (citing Cal. Comm. Code § 2316 and Appalachian Ins. Co.  
2 v. McDonnell Douglas Corp., 214 Cal. App. 3d 1, 26 (1989) (“Warranty  
3 disclaimers . . . are specifically authorized by the California Uniform Commercial  
4 Code . . . and the Supreme Court has held no public policy opposes private,  
5 voluntary transactions in which one party, for a consideration, agrees to shoulder a  
6 risk which the law would otherwise have placed upon the other party.”) (citations  
7 omitted)).

8 Plaintiff counters that “Section 2719 of the Uniform Commercial Code only  
9 allows for limitation of consequential damages . . . .” However, Plaintiff cites no  
10 case law or California code supporting the notion that modifications or exclusions  
11 of the implied warranty of merchantability are limited to consequential damages.

12 The court concludes that Plaintiff appears to have been surprised by the  
13 terms of her LG refrigerator’s warranty, especially because Plaintiff was unable to  
14 view the disclaimer prior to purchasing the refrigerator. Plaintiff’s pleadings also  
15 suggest that her LG refrigerator did not meet the most basic degree of fitness for  
16 its standard use. Such inability to use the LG refrigerator for its intended purpose  
17 suggests that substantive unconscionability may exist. However, the court agrees  
18 that the waiver of the implied warranty of merchantability was not procedurally  
19 unconscionable because Plaintiff has not pled either that other choices were not  
20 available to her or that she could not obtain additional warranty coverage from  
21 LG. Accordingly, this claim is dismissed for failure to state a claim.

22 **c. MMWA Claim**

23 The MMWA provides a federal cause of action for state express and  
24 implied warranty claims. 15 U.S.C. §§ 2301, *et seq.* But the MMWA “does not  
25 expand the rights under those claims, and dismissal of the state law claims

1 requires the same disposition with respect to an associated [MMWA] claim.” In  
2 re NVIDIA GPU Litig., 2009 U.S. Dist. LEXIS 108500, at \*24 (N.D. Cal. 2009).  
3 As the court has dismissed Plaintiff’s express and implied warranty claims, the  
4 MMWA claim must also be dismissed.

5 **IV. MOTION TO STRIKE**

6 **A. Legal Standard**

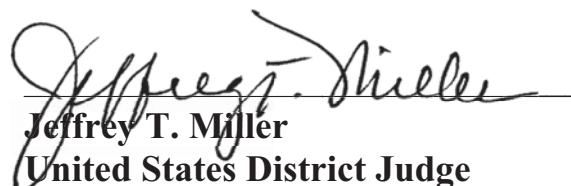
7 Rule 12(f) provides that the court “may strike from a pleading an  
8 insufficient defense or any redundant, immaterial, impertinent, or scandalous  
9 matter.” Fed. R. Civ. P. 12(f). However, striking the pleadings is considered “an  
10 extreme measure,” and Rule 12(f) motions are therefore generally “viewed with  
11 disfavor and infrequently granted.” Stanbury Law Firm v. IRS, 221 F.3d 1059,  
12 1063 (8th Cir. 2000) (quoting Lunsford v. United States, 570 F.2d 221, 229 (8th  
13 Cir. 1977)). LG requests that the court strike Plaintiff’s class allegations from the  
14 FAC pursuant to Rule 12(f) because class, as defined by the Plaintiff, cannot be  
15 maintained. However, as the court has dismissed the Plaintiff’s claims, LG’s  
16 motion to strike is moot. Thus, the court need not address this motion further.

17 **V. CONCLUSION**

18 For the reasons stated above, defendant LG’s motion to dismiss is  
19 GRANTED with leave to amend, and LG’s motion to strike is DENIED as moot.  
20 Plaintiff has until July 8, 2013 to file an amended complaint.

21 **IT IS SO ORDERED.**

22 DATED: June 7, 2013

23   
24 Jeffrey T. Miller  
25 United States District Judge